SUPREME COURT, U. S.

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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 1100

NORTHERN FREIGHT LINES, INC., ET AL., *Appellants*,

v.

UNITED STATES OF AMERICA, ET AL., *Appellees*.

On Appeal from the United States District Court for the Northern District of Georgia, Atlanta Division

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MOTION TO AFFIRM

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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Appellees, the Drug and Toilet Preparation Traffic Conference, The National Small Shipments Traffic Conference, Inc., Eastern Industrial Traffic League, American Home Products Corporation, the Norwich Phar-

macal Company, and Sterling Drug, Inc. move pursuant to Rule 16(1)(c) of the Rules of this Court to affirm the judgment of the District Court.

STATEMENT

This is a direct appeal from a final judgment of a three-judge district court (J.S. 1a-18a, reported at 304 F. Supp. 536) dismissing appellants' suit to review a report and order of the Interstate Commerce Commission in a rule-making proceeding. The Commission decided to continue its flexible method of setting terminal areas for express companies.

The facts of the case are simple. Express companies have always set their own terminal areas by tariff publication (J.S. 28a, 29a, 31a). Thousands of points having a total population in the millions are included in REA's present terminal areas but lie beyond the motor carrier MC-37 areas (J.S. 31a). Many shippers and their customers either ship or receive a significant volume of express shipments from or to points beyond the motor carrier MC-37 terminal areas (J.S. 32a-33a).

The Commission found that application of the MC-37 zones would make express service unresponsive to the demonstrated need of the shipping public, that the express terminal areas should be sufficiently extensive to serve the needs of the public, and that they should be set in the same manner as heretofore, subject to Commission review under Part I of the Interstate Commerce Act (J.S. 43a).

The court below held that the Interstate Commerce Commission had a rational basis for its decision.

ARGUMENT

There is abundant support for the court's decision and for that of the Commission. As noted by the court below, the I.C.C. maintained the status quo and concluded that REA should continue to set its terminal areas by tariff publication. The Commission recognized the adverse impact on shippers that would flow from restricting REA's terminal area operations as appellants urged:

> "Thus faced with the reality of some 16 million people together with numerous industrial, retail, and military facilities being deprived of express service they presently receive and depend upon and at the same time being fully cognizant of our responsibilities under the act and the national transportation policy, we recognize that adequate provision for the continuation of this service must be made." (J.S. 40a).

The court reviewed in specific detail the record evidence of shipper dependence upon REA service (J.S. 11a), and concluded that the I.C.C. "has protected the shipping public". (J.S. 11a)

In deciding to maintain flexibility in express company terminal areas the Commission carefully considered the evidence in the record, the effect of maintaining the status quo and the appropriate statutory criteria, including the national transportation policy. The court below properly found that the Commission's decision was rationally based.

The Commission's decision here changed nothing. As the Commission and the court each noted (J.S. 54a-55a and 16a respectively), REA's terminal areas have

been and are subject to investigation, suspension, and complaint proceedings. Appellants are free so to proceed.

CONCLUSION

Since this appeal presents no issue warranting plenary consideration, the judgment of the court below should be affirmed.

Respectfully submitted,

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